

F I L E D
STEPHEN THUNBERG
Clerk of the Superior Court

JUN 06 2002

By: J. JOHNSON, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. BILL LOCKYER,
Attorney General of the State of
California,

Plaintiffs,

v.

R.J. REYNOLDS TOBACCO COMPANY,

Defendants.

) Case No.: GIC 764118

STATEMENT OF DECISION

I. INTRODUCTION

The instant action was brought by the Attorney General of the State of California charging R. J. Reynolds Tobacco Company (RJR) with violating the Master Settlement Agreement (MSA), which was entered into by RJR and the State of California (among others states) in November 1998. The Attorney General contends that RJR violated the MSA by indirectly targeting "Youth" ("any person or persons under 18 years of age") in its tobacco advertising campaigns. The MSA expressly states that one of its primary objectives is "to reduce Youth smoking" and contains an express provision regarding tobacco advertising, the "Prohibition On Youth

1 Targeting" ("the Provision"), the interpretation of which is essential to deciding the
2 issue of RJR's alleged breach.

3 In interpreting the meaning of the Prohibition, the Court applies common rules
4 of contract interpretation and construes the Provision in light of the MSA as a whole
5 (including its goal of reducing Youth smoking), the structure of the Provision, and its
6 express language, particularly, the meaning of the critical clause "[n]o Participating
7 Manufacturer may take any action, directly or indirectly, to target Youth" (emphasis
8 supplied). The Court concludes that the Prohibition, precludes settling tobacco
9 manufacturers from taking any action that exposes Youth to tobacco advertisement
10 to virtually the same degree as if Youth had been directly targeted.

11 The evidence reveals that after it entered into the MSA, RJR made absolutely
12 no changes to its advertising campaigns, failed to include the goal of reducing Youth
13 exposure to tobacco advertising in its marketing plans and failed to take any actions
14 to track whether or not it was meeting its professed goal of reducing Youth smoking.
15 Further, while RJR made some changes to its marketing strategies in subsequent
16 years, the changes were minimal and had little, if any, impact in reducing Youth
17 exposure to its tobacco advertising. As a result, since the MSA was signed, RJR has
18 exposed Youth to its tobacco advertising at levels very similar to those of targeted
19 groups of adult smokers.

20 In sum, after hearing and carefully considering all the evidence, this Court
21 finds that RJR violated the MSA by indirectly targeting Youth in its tobacco
22 advertising.

23 Accordingly, and under the terms of the MSA and the Consent Decree, which
24 allows the Attorney General to seek monetary sanctions for violation of the Consent
25 Decree, the Court hereby penalizes RJR in the amount of \$20 million and also orders
26 RJR to take certain actions to comply with the terms of the MSA prohibiting Youth
27 targeting in its print advertising.
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II. FINDINGS OF FACT

A. The MSA and the Consent Decree

In November 1998, the Attorney General of California and the attorneys general of nearly every other state entered into a landmark Master Settlement Agreement (MSA) with the major cigarette manufacturers resolving a large number of lawsuits brought by the states against the tobacco companies. The lawsuits sought damages caused to the states based on a number of claims, including targeting Youth in marketing and advertising. All the major tobacco companies, including R. J. Reynolds Tobacco Company (RJR), signed the agreement.

Section I of the MSA contains various recitals including the following:

WHEREAS, the Settling States that have commenced litigation have sought to obtain equitable relief and damages under state laws, including consumer protection and/or antitrust laws, in order to further the Settling States' policies regarding public health, including policies adopted to achieve a significant reduction in smoking by Youth; (emphasis supplied)

...

WHEREAS, the Settling States and the Participating Manufacturers are committed to reducing underage tobacco use by discouraging such use and by preventing Youth access to Tobacco Products; (emphasis supplied.)

...

WHEREAS, the undersigned Settling State officials believe that entry into this Agreement and uniform consent decrees with the tobacco industry is necessary in order to further the Settling States' policies designed to reduce Youth smoking, to promote the public health and to secure monetary payments to the Settling States (emphasis supplied.); and

1 WHEREAS, the Settling States and the
2 Participating Manufacturers . . . have agreed to
3 settle their respective lawsuits and potential
4 claims pursuant to terms which will achieve for
5 the Settling States and their citizens significant
6 funding for the advancement of public health,
7 the implementation of important tobacco-related
8 public health measures, including the
9 enforcement of the mandates and restrictions
10 related to such measures, as well as funding for
11 a national Foundation dedicated to significantly
12 reducing the use of Tobacco Products by Youth;
13 (emphasis supplied)

14 (Exhibit 153)

15 Section II consists of definitions of terms used in the agreement. Included in
16 Section II was a definition of the term "Youth." "Youth" is defined as "any person or
17 persons under 18 years of age."

18 Section III is entitled "PERMANENT RELIEF." The very first proscription
19 enumerated is the "Prohibition on Youth Targeting." This provision states:

20 Prohibition on Youth Targeting. No Participating
21 Manufacturer may take any action, directly or
22 indirectly, to target Youth within any Settling
23 State in the advertising, promotion or marketing
24 of Tobacco Products; or take any action, the
25 primary purpose of which is to initiate, maintain
26 or increase the incidence of Youth smoking
27 within any Settling State.

28 In December 1998, the parties also executed a Consent Decree and Final
Judgment, ("Consent Decree"), which the Court granted.

A few selected prohibitions including the Prohibition on Youth Targeting were
incorporated into the Consent Decree in Section V, which entitles the signing
parties to equitable relief.

The parties agree that the Consent Decree entitles the Attorney General to seek
an order for monetary sanctions for violation of the Consent Decree. (See Consent
Decree Section VI (A) at p. 10, and also Reporter's Transcript of teleconference

1 hearing held on June 4th, 2002.) Under the Consent Decree, the Court retains
2 discretion not to enter an order for monetary sanctions, civil contempt or criminal
3 sanctions for violation of the provisions of the Consent Decree.

4 The Consent Decree also provides in Section VI (D) that:

5 In any proceeding which results in a finding
6 that a Participating Manufacturer violated the
7 Consent Decree and Final Judgment, the
8 Participating Manufacturer . . . found to be in
9 violation shall pay the State's costs and
attorneys' fees incurred by the State of
California in such proceeding.

10 Section XV of the MSA is entitled "VOLUNTARY ACT OF THE
11 PARTIES" and provides that:

12 The Settling States and the Participating
13 Manufacturers acknowledge and agree that this
14 Agreement is voluntarily entered into by each
15 Settling State and each Participating
16 Manufacturer as the result of arm's-length
17 negotiations, and each Settling State and each
18 Participating Manufacturer was represented by
19 counsel in deciding to enter into this Agreement.
20 Each Participating Manufacturer further
21 acknowledges that it understands that certain
22 provisions of this Agreement may require it to
23 act or refrain from acting in a manner that could
24 otherwise give rise to state or federal
25 constitutional challenges and that, by
26 voluntarily consenting to this Agreement, it . . .
27 waives for purposes of performance of this
28 Agreement any and all claims that the provisions
of this Agreement violate the state or federal
constitutions. Provided however, that nothing in
the foregoing shall constitute a waiver as to the
entry of any court order (or any interpretation
thereof) that would operate to limit the exercise
of any constitutional right except to the extent of
the restrictions, limitations or obligations
expressly agreed to in this Agreement or the
Consent Decree.

1 B. RJR and its Conduct after the MSA

2 R.J. Reynolds Tobacco Holdings, Inc. was incorporated as a holding company
3 in 1970 and is listed on the New York Stock Exchange as RJR. RJR's wholly owned
4 subsidiary is R.J. Reynolds Tobacco Company, referred to as RJR Tobacco (RJR).
5 RJR is the second largest cigarette manufacturer in the United States. RJR's largest
6 selling cigarette brands, Camel, Winston, Salem and Doral, were four of the top ten
7 best selling cigarette brands in the United States in 2001. Other RJR brands
8 included Vantage, More, Now, Monarch and Best Value.

9 RJR's net sales were \$7,468,000,000 in 1999, \$8,058,000,000 in 2000 and
10 \$8,585,000,000 in 2001. Profits were \$195,000,000 in 1999, \$352,000,000 in 2000
11 and \$444,000,000 in 2001. On December 31, 2001, RJR Tobacco Holdings, Inc., had
12 \$2,227,000,000 in cash and short-term investments on hand.

13 After the MSA was signed in 1998, and until June of 2000, RJR did not alter its
14 conduct with respect to Youth advertising. RJR simply followed its previous pattern
15 of avoiding advertising in magazines that had a majority of readers under the age of
16 21. According to Ms. Patricia Ittermann, Vice President of RJR in charge of media
17 planning, as a result of the MSA, no changes were made in print media policies in
18 these years.

19 RJR avoided doing any media research to determine the extent to which their
20 print advertising reached Youth. In the so-called Beasley Pledge of February 9th,
21 1998, Ms. Lynn J. Beasley, then Vice President of Marketing at RJR and now
22 President of RJR, stated that "[a]s marketers, we will continue to do no tracking
23 research in which we obtain information from persons who are under the age of 18."
24 She also stated that "[i]n planning and executing our marketing activity, we will strive
25 to avoid interaction with those under the age of 18." Every employee in the RJR
26 marketing department had to sign the Pledge and adhere to the policy.

27 On November 4, 1999, state attorneys general met with RJR and voiced
28 concern about Youth targeting in magazine advertising placement.

1 On December 10, 1999, Mr. Guy M. Blynn, General Counsel for RJR, wrote a
2 letter to the National Association of Attorneys General Tobacco Committee addressing
3 RJR's compliance with the MSA. With regard to print advertising, Mr. Blynn stated
4 that "[w]e are unwilling to preclude ourselves from advertising in publications which
5 have more than a certain number of 'readers' who are under the age of 18 when that
6 number is less than 50 percent of 'readers.' This would preclude us from one or
7 more of the most popular publications, even if this 'readership' overwhelmingly was
8 adult --- a result which would damage us competitively and unacceptably oust us
9 from one of the remaining media through which we can communicate with adults
10 who smoke. . . ."

11 According to the United States census for the year 2000, Youth age 12 to 17
12 made up about 10.7 percent of the United States population.

13 In January 2000, Brown & Williamson (B & W) announced a 15 percent Youth
14 readership policy, that is, that B & W would not place tobacco advertising in any
15 publication having more than 15 percent Youth readership.

16 In February 2000, California's Attorney General served RJR with a notice of
17 intent to sue.

18 In May 2000, Phillip Morris articulated a policy that Phillip Morris would not
19 place tobacco ads in any publication having more than 15 percent Youth readership
20 or more than 2,000,000 Youth readers.

21 In June 2000, RJR announced a 33 1/3 percent Youth readership policy. The
22 only tangible consequence of this change was that the magazine Vibe was removed
23 from the approved list of publications.

24 In 2000, there was a decline in the amount of print advertising, money spent
25 by Philip Morris and B & W and in the amount of Youth exposure to their print
26 advertising, but this was not true of RJR.

27 On March 19th, 2001, the California Attorney General sued RJR for Youth
28 targeting in magazine advertising placement in the instant case. The Attorney

1 General alleged that in 1999, 2000 and 2001, RJR's advertising placement practices
2 in national consumer magazines violated the MSA by targeting Youth.

3 On March 19th, 2001, RJR announced a policy to limit advertising in
4 magazines having less than a 25 percent Youth readership. As a result of this
5 change in policy, RJR dropped one publication that it was using for advertising, Spin,
6 and removed three other publications that were not being utilized from the list of
7 approved publications. In determining the percentage of Youth readers ages 12
8 through 17, RJR accepts Mediamark Research, Inc. (MRI) and Simmons research (see
9 below) as conclusive.

10 Since signing the MSA, RJR has spent over \$200 million on magazine
11 advertising.

12 **III. Evidence of RJR's Violation of the MSA**

13 A. The Statistical Data

14 In 1999, 2000, and 2001, RJR utilized the services of its media planner, Long
15 Haymes Carr, to devise media plans for its nationwide magazine advertising. Long
16 Haymes Carr and RJR used MRI data to measure the quantitative effectiveness and
17 demographic composition of the audience it reaches in its print media campaign. To a
18 lesser extent, RJR used an alternative measuring survey called Simmons for the
19 same quantitative data. MRI is the most widely used and accepted service for
20 measuring magazine audience. MRI is to magazine audience measurement what
21 Arbitron is to radio audience measurement and Nielsen is to TV audience
22 measurement. In other words, MRI is the standard magazine audience measurement
23 survey in the United States, which experts agree is the best available source of such
24 information.

25 RJR and Long Haymes Carr used MRI to measure reach, which is the
26 percentage of the targeted demographic group that is exposed to at least one
27 magazine in the advertising schedule, and frequency, which is the average number of
28 times persons reached are exposed to that advertising. Target rating points (TRPs),

1 also referred to as gross rating points, are also measured. TRPs are calculated by
2 multiplying the reach times the frequency.

3 B. Accuracy of the Statistical Data

4 Both the MRI Youth and adult surveys are conducted in accordance with
5 appropriate and generally accepted methods and procedures followed by social
6 scientists and statisticians. There is no non-response bias in the data. Other
7 possible sources of bias, including bias in the selection of the sample, in weighing of
8 the sample, differences in the form of the question and conforming bias are minimal
9 or nonexistent. The only bias which cannot be eliminated is memory bias. From a
10 statistical standpoint, all other possible biases can be eliminated. In other words, the
11 data from both the Youth and adult MRI studies are valid and reliable.

12 With respect to the entire advertising schedule, the margins of error are small
13 relative to the reach and frequency being estimated, and consequently those values
14 are reliable. On the Youth studies, the margin of error is small and the reliability is
15 large.

16 RJR uses MRI data, both Youth and adult versions, and uses MRI data liberally
17 to measure its success in targeting various segments of the adult market.

18 C. Evidence Relating to Targeting

19 The majority of RJR's media plans directly target younger adult smokers ages
20 21 to 34. For example, the Camel media plan targets smokers age 21 to 24 as the
21 core target and adult smokers age 21 to 34 (see Exhibit 38). RJR and Long Haymes
22 Carr liberally use MRI data to measure the effectiveness of this print advertising.

23 According to an examination based on MRI's data between 1997 and 2001, the
24 delivery of print media advertising by RJR to its stated target audience of young adult
25 smokers and to Youth age 12 to 17 is essentially the same.

26 For the year 1999, the reach and frequency numbers for adult smokers and
27 Youth age 12 to 17 were virtually the same. Reach for adult smokers age 21 to 34
28 was 97.19 percent and reach for Youth smokers age 12 to 17 was 97.1 percent.

1 Frequency for smokers age 21 to 34 was 62.7 and for Youth was 68.2. Target rating
2 points for adult smokers 21 to 34 were 6140 and for Youth 6626. Based on these
3 figures in 1999, the year after the MSA was signed, 97.1 percent of Youth across the
4 country, including California, were exposed to RJR ads 68.1 times. In addition, in
5 1999, RJR's Camel advertisement in teen-measured magazines reached 88.5 percent
6 of teens 22.7 times. These same adds reached 88 percent of young adult smokers
7 16.8 times. Thus, more teens were reached than members of the targeted group of
8 young adult smokers.

9 Using MRI data based on 38 magazines which measure market exposure to
10 Youth, Youth exposure to Camel advertising did not drop after the MSA but actually
11 went up a bit. For the year 2000, looking at Camel advertising, 89 percent of the ads
12 were placed in magazines whose Youth composition exceeded their percentage in the
13 adult population.

14 Similarly for the year 2000, looking at the Youth-measured magazines, 96.3
15 percent of adult smokers were reached and 95.2 percent of Youth were reached. The
16 frequency was 54.2 times for adult smokers and 54.7 times for Youth. The target
17 rating points for adult smokers 21 to 34 were 5218 and for Youth 5202. Essentially,
18 RJR advertising for its target audience of young adult smokers reached Youth at
19 about the same frequency as adult smokers.

20 On March 19, 2001, RJR announced a policy whereby RJR would not advertise
21 in any magazine having a Youth readership of over 25 percent according to either
22 MRI or Simmons data.

23 For the year 2001, RJR spent less on print advertising than in the previous
24 several years. The TRP delivery numbers for adult smokers age 21 to 34 of 1571
25 were not substantially different than the Youth number of 1392. RJR print media
26 advertising reached 85.5 percent of Youth 10.3 times on average.

27 Various experts, including media researcher Stuart Gray and University of
28 Southern California marketing professor Michael Kamins, who is an expert in

1 consumer survey research, credibly opined from the standpoint of their expert
2 training and experience that there are two kinds of targeting. The first kind of
3 targeting, direct targeting, occurs where the advertiser intends to deliberately target
4 members of a particular group. The second type of targeting, indirect targeting,
5 occurs when there is no demonstrable evidence of intent to target, but nevertheless a
6 group other than the group directly targeted is reached in a measurable way similar
7 to the group directly targeted. Thus, indirect targeting can be established by
8 examining the reach and frequency of advertising, even where proof of intent to target
9 is absent. Because RJR was reaching Youth at the same level in its advertising as
10 targeted adult smokers, RJR indirectly targeted Youth.

11 RJR advertised in many magazines that had huge Youth readerships, such as
12 Sports Illustrated, which has about 5,000,000 Youth readers. Further, RJR
13 advertised in many magazines read by Youth at disproportionately higher levels than
14 adult smokers and also, in magazines read by a higher percentage of Youth than by
15 young adult smokers. RJR had access to data from MRI and Simmons which would
16 have revealed that the reach and frequency of RJR advertising for Youth was about
17 the same as for targeted groups of adult smokers, but RJR did not examine this data.

18 RJR's stated policy since signing the MSA has been to avoid targeting Youth in
19 its advertising, yet this goal is absent from its media plans. Further, RJR does not
20 attempt to measure the success of this goal, which RJR could accomplish through
21 use of data that is readily available, and which it uses to measure other media-
22 related goals. In the current business environment, capable managers, such as those
23 at RJR, routinely set goals and measure whether the goals set are achieved. Yet
24 unlike other media-related goals, RJR does not incorporate the goal of avoiding Youth
25 in its advertising into its media plan and does not attempt to measure achievement of
26 this goal, despite its professed commitment, as expressly stated in the MSA and in
27 policy statements of RJR, to reduce Youth smoking.

1 It is possible to develop and implement media plans and measure the success
2 of media plans whose purpose is to reduce Youth exposure to cigarette advertising
3 while still having significant exposure to adult smokers. The actual practice of other
4 tobacco companies, such as Phillip Morris, demonstrates that it is possible to reduce
5 Youth exposure in print media advertising to levels below those for targeted adult
6 smokers while maintaining significant exposure to adult smokers.

7 Minimizing exposure to certain groups to be avoided is possible given the
8 unique character of magazine advertising which allows advertising to identify and
9 hone into a specific demographic groups based on age, income and lifestyle. Thus,
10 media planner Sue McCullough developed media schedules which achieved effective
11 exposure through print advertising to 87 to 92 percent of adult smokers while at the
12 same time demonstrating significant reduction to Youth exposure.

13 **IV. Legal Conclusions and Findings**

14 A. Construction of Prohibition on Youth Targeting

15 In interpreting the MSA and consent decrees, ordinary rules of contract
16 interpretation apply (see *Pardee Construction Company v. City of Camarillo* (1984) 37
17 Cal.3d 465, 471). In construing a contract, the whole of a contract is to be taken
18 together so as to give effect to every part. If reasonably practicable, each clause
19 should be used to help interpret the other (Civ. Code § 1641). If the terms of a
20 contract are clear and explicit, the intent of a contract governs its interpretation (Civ.
21 Code § 1638). Further, in this case, the MSA itself and the Consent Decree prohibit
22 admitting evidence of settlement discussions or negotiations proceeding the
23 agreement. (Section XVIII(f) of the MSA)

24 In light of the issues in this case, the provision entitled "Prohibition on Youth
25 Targeting" is critical and must be construed in the context of the MSA as a whole. In
26 this regard, it is important to emphasize that the recitals stress the primary
27 importance of reducing tobacco use by Youth and that preeminent in the Permanent
28 Relief Section is the Prohibition of Youth Targeting (the "Prohibition").

1 The Prohibition contains two parts separated by a disjunctive "or." The first
2 part states that "[n]o Participating Manufacturer may take any action, directly or
3 indirectly, to target Youth within any Settling State in the advertising, promotion or
4 marketing of tobacco products. . . ." The second part states that "[[n]o participating
5 manufacturer may] take any action the primary purpose of which is to initiate,
6 maintain or increase the incidence of Youth smoking within any Settling State." The
7 second part therefore proscribes any other action (besides advertisement) when its
8 primary purpose "is to initiate, maintain or increase the incidence of Youth smoking
9 within any settling state."

10 Therefore, when read together and in the context of the entire MSA, one must
11 conclude that the first part is basically an advertising prohibition that has no
12 limitations as to purpose or primary purpose "in initiat[ing], maintain[ing] or
13 increasing] the incidence of Youth smoking," since this language was not included in
14 the first part, but only in the second part. Accordingly, with regard to the advertising
15 prohibition, it does not matter whether the participating manufacturer had any
16 purpose or primary purpose to increase the incidence of Youth smoking in designing
17 and implementing its advertising campaign.

18 In short, the advertising prohibition is clear as well as broad: "No
19 manufacturer [regardless of purpose or intent] may take any action, directly or
20 indirectly, to target Youth within the settling states"

21 This next critical language is the clause "directly or indirectly," which, as noted
22 earlier, must be given effect in light of the language and construction of the
23 Prohibition itself as well as the entire contract, whose objective is the reduction of
24 Youth smoking. The term "indirectly" was inserted for a reason and given its
25 proximity to the phrase "any action," and the phrase that follows, specifically, "in the
26 advertising, promotion or marketing of Tobacco Products," the most logical and
27 linguistically sound construction is that it refers to "any action" taken with regard to
28 the advertisement of Tobacco Products. Further, since there is no "purpose" or

1 "intent" limitation in the advertisement prohibition, which contains the term
2 "indirect," one must conclude that "indirectly" refers to any tobacco advertising
3 actions that result in Youth exposure to virtually the same degree as if Youth had
4 been directly targeted.

5 This interpretation is supported by the expert testimony of witness Stuart
6 Gray, an expert in media research, and University of Southern California business
7 Professor of Marketing, Michael Kamins. Further, not surprisingly, these witnesses
8 reached the same conclusion not based on an interpretation of the MSA but on their
9 training and experience in their respective disciplines, media planning and
10 marketing.

11 This construction is also supported by the subsequent conduct of the tobacco
12 companies that signed the MSA. In construing the meaning of a contract, courts may
13 look to acts of the parties subsequent to the execution of the contract and before any
14 controversy has arisen. This rule of practical construction is predicated on a
15 common sense concept that "[a]ctions speak louder than words." Words are a direct
16 but imperfect medium to convey thoughts and intentions. When the parties to a
17 contract enter into it and demonstrate by their conduct that they knew what they
18 were talking about, the court should enforce their intent. (*Crestview Cemetery*
19 *Association v. Dieden* (1960) 54 Cal.2d 744, 754; see also, *Doll v. Maravilas* (1947) 82
20 Cal.App.2d 943, 949)

21 The evidence establishes that other tobacco companies which signed the MSA,
22 such as Philip Morris and B & W, reduced their advertising exposure to Youth after
23 signing the MSA by not advertising in publications having more than 15 percent total
24 Youth readership, and Phillip Morris, in addition, decided not to advertise in
25 publications with more than 2,000,000 Youth readership. The conduct of these other
26 tobacco companies that signed the MSA provides strong circumstantial evidence that
27 they believed that dramatic steps to reduce Youth exposure to tobacco advertising
28 had to be taken to comply with the requirements of the MSA. In contrast, RJR did

1 nothing in 1999 and 2000 to reduce Youth exposure, and did very little in 2001.
2 Further, it did so only after being given notice of the intent to file this action, and
3 worse still, RJR actually waited until the very day the action was filed to take
4 insufficient remedial action.

5 Lastly, the Court construes Section XV, "VOLUNTARY ACT OF THE PARTIES,"
6 to mean that the parties expressly and knowingly waived any First Amendment
7 defense to an enforcement action, such as the instant one, so long as the Court's
8 order is consistent with the "restrictions, limitations or obligations expressly agreed
9 to in this Agreement [the MSA] or the Consent Decree."

10 B. RJR Violated the MSA

11 The MRI data convincingly establishes that even though RJR advertising for the
12 most part directly targeted young adult smokers for the years from 1998 through
13 2001, Youth were reached as often and with about the same frequency as young
14 adult smokers. Thus, although Youth may not have been directly targeted, the
15 empirical data established that RJR's indirectly targeted Youth, thereby violating the
16 MSA.

17 Further, the evidence establishes that RJR stated that it did not target Youth.
18 Yet despite access to data by which Youth exposure could readily have been
19 compared to adult smoker exposure, RJR intentionally avoided examining this data
20 which would have indicated whether or not RJR was succeeding in its stated
21 intention of avoiding Youth exposure to tobacco advertising. RJR's failure to measure
22 whether or not its stated goal of minimizing Youth exposure was met casts doubt on
23 RJR's intent to abide by the terms of the MSA and its expressly stated purpose of
24 avoiding targeting Youth. In a corporate world where most goals are set and then
25 measured, it strains credibility that RJR seriously set avoidance of Youth exposure as
26 a goal, and yet, unlike any other goals it set for its performance, refused to measure
27 the attainment of this goal. In fact, an examination of the data RJR had available to
28 it would have shown that in 1999 its advertising reached 97.1 percent of Youth 68.1

1 times, that in 2000, it reached 95.2 percent of Youth 54.7 times on average, and that
2 in 2001 it reached 85.5 percent of Youth 16.3 times on average. These figures were
3 in fact quite similar to the figures for targeted adult smokers in those periods.

4 At various times between 1999 and 2001, RJR's policy allowed it to advertise in
5 magazines which had up to 50 percent, up to 33 1/3 percent or up to 25 percent
6 Youth readership. RJR President Lynn Beasley, a very dynamic and talented
7 individual, professed not to know that only approximately 10 percent of U.S.
8 population was made up of teenagers. Nevertheless, it is reasonable to infer given
9 the evidence that knowledgeable and talented marketing people at RJR knew this
10 fact. In any event, RJR's policy between 1999 and 2001 allowed RJR to advertise in
11 magazines where Youth represented 2 1/2 to 5 times their proportion of the
12 population. During the period between 1998 and 2001, RJR devoted a substantial
13 portion of its advertising to magazines having a disproportionately high share of
14 Youth readers including rock entertainment music magazines such as Spin, Vibe and
15 Rolling Stone, and motor magazines such as Hot Rod and Car and Driver. Under
16 these circumstances, it is reasonable to conclude that RJR, even without examining
17 all the data it had at its disposal, realized or should have realized that it was reaching
18 Youth at levels at least as great as adults in its print advertising and that was
19 indirectly targeting Youth in its print media advertising.

20 There is additional evidence based on expert testimony which also supports the
21 conclusion that RJR was indirectly targeting Youth in its print advertising. The
22 consensus of most media experts who testified at trial is that if a specific age group,
23 in this case young adults, was targeted, the other age groups closest to the age group
24 targeted would also likely be reached in higher proportion than groups more removed
25 from the targeted group. Moreover, a substantial portion of RJR's advertisement
26 appeared in publications where Youth comprise a disproportionately higher share of
27 readers than adult smokers. The totality of this evidence leads to the logical
28 conclusion that it was or should have been apparent to the skillful and bright people

1 who managed RJR's multimillion-dollar sophisticated print advertising campaign that
2 Youth were exposed to tobacco advertising at levels substantially similar to targeted
3 adult smokers.

4 The evidence also establishes that RJR saw itself losing market share,
5 especially to Philip Morris, and believed it had to be more aggressive than the other
6 tobacco companies in its advertising so as not to lose any more market share even
7 though the likely effect of these efforts was to cause significant exposure to Youth.
8 To achieve its marketing goals, in the most direct manner, RJR willingly engaged in
9 an aggressive print advertising campaign to maximize exposure to targeted groups
10 such as Young adult smokers, simply choosing to ignore the foreseeable consequence
11 of significant Youth exposure. In 2001, a high-level RJR executive announced that
12 RJR understands that the MSA seeks to dramatically reduce tobacco advertising to
13 Youth while allowing limited communications with adult smokers. (Exhibit 66)
14 Nevertheless, RJR conducted itself in a manner inconsistent with its understanding
15 of the mandate of the MSA by pursuing an extensive advertising campaign aimed at
16 young adult smokers without taking any action to dramatically reduce exposure to
17 Youth.

18 Taking all of the evidence presented into account, it appears likely that RJR
19 studiously avoided analyzing the reach and frequency of its Youth advertising to kids
20 12 to 17 and comparing it to the reach and frequency of its smoking adult targeted
21 groups because RJR knew the likely result of such analysis. In any event, the same
22 evidence provides strong circumstantial support for what the MRI data conclusively
23 establishes, that is, that RJR succeeded in exposing Youth at essentially the same
24 levels as it targeted young adult smokers and violated the provisions of the MSA
25 proscribing "any action, directly or indirectly, to target Youth . . . in [its]
26 advertising. . . ."

27 / / /

28 / / /

V. Ruling

Based on the evidence presented, this Court determines that RJR has violated Section III(a) of the MSA, the "Prohibition on Youth Targeting."

Therefore, pursuant to Section VII (c)(3) and Section VII (c)(4) of the MSA, and pursuant to Section VI of the Consent Decree, the Court issues the following enforcement order:

RJR is restrained from continued violations of Section III (a) of the MSA by exposing Youth to its advertising at levels similar to the levels of adult smokers.

In order to ensure future compliance with the MSA, RJR is ordered to do the following:

1. Adopt, adhere to, and incorporate as part of its media strategy, reasonable measures designed to reduce Youth exposure to RJR tobacco advertising to a level significantly lower than the level of exposure to targeted groups of adult smokers.
2. Employ reliable means such as MRI and Simmons data, to measure RJR's success in achieving this goal in order to demonstrate that actual Youth exposure to print media tobacco advertising is significantly less than exposure to targeted groups of adult smokers.

Based on the evidence presented in this case, and pursuant to Section VII (c)(4) of the MSA, this Court orders RJR to pay sanctions in the amount of \$20,000,000 to the plaintiff by July 1, 2002, and to pay reasonable attorneys' fees in an amount to be determined by the Court through a noticed motion.

The Court further notes that this Order does not operate to limit the exercise of any constitutional right, rather it interprets and clarifies the meaning of "restrictions, limitations or obligations expressly agreed to . . . [in the MSA] or the Consent Decree," particularly the Prohibition on Youth Targeting.

1 The Attorney General is directed to prepare a judgment in compliance
2 with this order and to circulate a proposed judgment for RJR's approval as to
3 form before submission to this Court.

4 IT IS SO ORDERED.

5
6 Dated: June 6, 2002

RONALD S. PRAGER

RONALD S. PRAGER
Judge of the Superior Court